IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1974
NO. 74-441

JOHN H. MEIER,

Petitioner,

vs.

GEORGE H. BOLDT,
U.S. District Judge,
District of Nevada, and
UNITED STATES OF AMERICA,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS
FOR THE NINTH CIRCUIT

MEIER'S REPLY TO OPPOSITION

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I

Count I of the Indictment, Appendix C to Petition, does not differentiate among the defendants. The reason that the dismissal was only as to Cowley is that he was the only

defendant* then before the district judge who made the order of dismissal of the conspiracy count on the grounds of legal and constitutional insufficiency.

A close reading of Count I compels the conclusion that if Count I is invalid and insufficient as to any one of the defendants, it is insufficient as to all, so that res judicata and collateral estoppel require a dismissal of Count I on Meier's motion. The denial of Meier's motion by respondent Boldt (Appendix A) was an arbitrary factual attempt to avoid application of these well-settled doctrines. Whether defendant Cowley be considered something special or not is immaterial, since the indictment does not distinguish among the defendants in the charging allegations or otherwise.

If the dismissal of Count I was erroneous or improper, then the Government should have appealed the dismissal. The prosecution is not entitled to two times at bat, having struck out the first time.

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*Defendant Kahan had been dismissed on the U.S.'s motion. Defendant Hatsis is before Judge Anderson of the District of Utah and Meier is the only defendant in the District of Nevada before Judge Boldt.

II

The Government fails to point out that with respect to the suppression action originating in the Central District of California, Meier also has appealed, primarily with respect to the exclusion of the District of Nevada from the ambit of the injunction. That matter, together with Meier's appeal from the dismissal of a similar action for injunction against Suckling, et al., brought in the District of Nevada which was dismissed without notice or hearing in violation of procedural due process (#74-1910, 9th Cir.), are set for argument on February 4, 1975.

The district court below was bound to hold as a matter of law, consistently with the California ruling, that Suckling had violated the attorney-client relationship in violation of Meier's constitutional rights under the 4th, 5th, 6th and 14th Amendments. There was no basis for another hearing below nor for the denial of Meier's motion to suppress Suckling's testimony since the identical issue had already been resolved after a trial.

III

Petitioner Meier has not been found guilty of anything and is not a fugitive in the sense that he has escaped from custody pending an appeal. The case of Molinaro

v. New Jersey, 396 U.S. 365 relied on by the U.S. concerned a prisoner who had been convicted of abortion and who was appealing from that conviction. Neither that case nor any of the cases cited therein concerns a citizen who has not been convicted of anything and who seeks review of arbitrary action prior to trial contrary to well-settled legal principles.

CONCLUSION

In view of the fact that the district court should have dismissed the conspiracy count in line with the ruling on the same charge by the Chief Judge in the District of Utah, and in light of the fact that the Government would probably not proceed to trial on the conspiracy count if Suckling's testimony were suppressed, this Court should grant the petition.

Not only would the interests of justice be served, but the waste of judicial time and the expenses incident to a lengthy trial would be obviated if this Court exercised its supervisory capacity to correct fundamental errors by the district court.

Respectfully submitted,

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